

## **REMARKS**

### **AMENDMENTS**

The Office Action of February 22, 2006 has been carefully considered. Reconsideration of this application, as amended, is respectfully requested.

The specification was objected to because of informalities noted therein. The Specification has been amended to correct various informalities noted by the Examiner as well as several additional formalities identified during a further review. In view of the various amendments to the Specification, Applicant respectfully submits that all objections to the disclosure identified by the Examiner have been overcome. No new matter is believed to have been added by the amendments to the Specification as the amendments were directed to correcting grammatical informalities and typographical errors noted therein.

Claims 1 and 12 have been amended to add the limitation of a base, to recite that the analytical unit moves relative to the base, and that the device/method change the position of the equatorial axis with respect to the base. Support for such amendments is found, for example, at page 4, line 28 through page 5, line 12, and also beginning at page 5, line 27 of the Specification.

### **REJECTIONS & TRAVERSAL**

Claims 1-7 and 11-15 were rejected under 35 USC §102(b) as being anticipated by Aslanov. Claim 8 was rejected under 35 USC 103(a) as being unpatentable over Aslanov in view of Koblenz in US 2,843,749 (Koblenz). Claims 9 and 10 were rejected under 35 USC 103(a) as being unpatentable over Aslanov in view of Fink et al. in US 5,359,640 (Fink).

Applicant notes that an aspect of the claimed invention permits the diffractometer to perform analyses on elements that cannot be supported on a sample holder, and even elements that cannot be moved. In order to perform an analysis, as explained for example at page 5 of the Specification, the possibility of rotating the analytical unit around the equatorial axis is essential, as well as the possibility of positioning the

radiation source and detector around the centre of the diffractometer at different diffraction angles. However, it is also necessary that the equatorial axis be adequately positioned with respect to the element to be analyzed. The diffractometer according to the invention set forth in the amended claims enables positioning of the analytical unit with respect to its base, and hence in an orientation dependent upon the position of the element to be analyzed.

Turning now to the teachings of the references relied upon, the following distinctions are noted in support of Applicant's traversal of the rejections.

Considering the rejection of claims 1-7 and 11-15, Aslanov teaches a laboratory diffractometer suitable for performing analysis on small samples, which can be supported on a sample holder and can be moved. In fact the sample holder can be rotated around the Y axis. The diffractometer according to Aslanov differs from the presently claimed diffractometer in that the axis designated with Z in the figures of Aslanov, which can be regarded as an equivalent of the equatorial axis, cannot be moved. There is no need that the diffractometer according to Aslanov perform such a positioning of the analytical unit. Accordingly, Aslanov does not teach the recited limitation of a means for moving the analytical unit with respect to the base, or moving the analytical unit to change the position of the equatorial axis with respect to the base, as presently recited in amended claims 1 and 12. The rejection of amended claims 1 and 12, and all claims dependent therefrom is, therefore, respectfully traversed.

Claim 8 was rejected under 35 USC 103(a) as being unpatentable over Aslanov in view of Koblenz. The rejection indicates that Aslanov fails to teach the recited ionization counter, but that such counter is set forth by Koblenz. Applicant respectfully submits that claim 8 is also distinguishable from the teachings of the proposed combination for the reasons previously set forth relative to claim 1. The alleged combination fails to teach a means for moving the analytical unit with respect to the base, or moving the analytical unit to change the position of the equatorial axis with respect to the base, as recited in amended claim 1 from which claim 8 depends. Hence, Applicant respectfully traverses the rejection.

Claims 9 and 10 were rejected under 35 USC 103(a) as being unpatentable over Aslanov in view of Fink. The rejection acknowledges that Aslanov fails to teach a pointing device on the analytical unit. Fink is asserted, however, as teaching the

pointing device recited in claim 9, as well as the dual-laser and telecamera limitations of claim 10.

With respect to claim 9, Applicant respectfully submits that the claim is also distinguishable from the teachings of the proposed combination for the reasons previously set forth relative to claim 1. The alleged combination fails to teach a means for moving the analytical unit with respect to the base, or moving the analytical unit to change the position of the equatorial axis with respect to the base, as recited in amended claim 1 from which claim 8 depends. Hence, Applicant respectfully traverses the rejection of claim 9.

Considering claim 10, the claim is patentably distinguishable from the proposed combination for the reasons previously discussed relative to claims 1 and 9. Moreover, Applicant notes that the Examiner has characterized the claimed dual-laser configuration as "mere duplication" of the Fink laser. Applicant respectfully maintains that the use of dual lasers, as set forth at page 7 of the Specification, indicate the correct positioning of the equipment with respect to the element analysed based upon the overlap of the two spots projected by the lasers along with their shape. Such a teaching is not believed to be "mere duplication" as it provides a noted advantage. Accordingly, claim 10 is also believed to be distinguishable over the alleged combination of Aslanov and Fink as the claimed limitations are not disclosed by either reference. Nor does either reference suggest the advantages of the claimed use of dual lasers for alignment, including automated positioning. Applicant, therefore, respectfully traverses the rejection of claim 10.

In view of the foregoing remarks and amendments, reconsideration of this application and allowance thereof are earnestly solicited. In the event that additional fees are required as a result of this response, including fees for extensions of time, such fees should be charged to USPTO Deposit Account No. 50-2737 for Basch & Nickerson LLP.

In the event the Examiner considers personal contact advantageous to the timely disposition of this case, the Examiner is hereby authorized to call Applicant's attorney, Duane C. Basch, at Telephone Number (585) 899-3970, Penfield, New York.

Respectfully submitted,



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